

CASE NO.:
Appeal (crl.) 510 of 2005

PETITIONER:
Munivel

RESPONDENT:
State of Tamil Nadu

DATE OF JUDGMENT: 05/04/2006

BENCH:
S.B. Sinha & P.P. Naolekar

JUDGMENT:
J U D G M E N T
WITH
Criminal Appeal No. 287/2006 @ S.L.P.(Crl.)No.997/2006

S.B. SINHA, J :

These two appeals arising out of the same judgment and involving common question of law and fact were taken up for hearing together and are being disposed of by this common judgment.

The Appellants herein, Munivel (original accused No.5), Kalith (original accused No.4), Selvam @ Silvakumar (original accused No.1), Sasi @ Sasikumar (original accused No.2) and Madhu @ Madhusudanan (original accused No.3) were convicted under Section 302 read with Section 149 of the Indian Penal Code ('IPC' for short) and sentenced to undergo rigorous imprisonment for life. Accused No.2 was also convicted under Section 307 IPC and sentenced to undergo ten years rigorous imprisonment. Accused No.3 was convicted for an offence under Section 302 IPC and sentenced to undergo life imprisonment. Accused No.4 was also convicted under Section 326 IPC and sentenced to undergo rigorous imprisonment for seven years. Accused No.5 was also convicted under Section 324 IPC and sentenced to undergo three years rigorous imprisonment. All the sentences were, however, directed to run concurrently. In an appeal preferred by the afore-mentioned accused persons, the High Court modified the judgment of the learned trial court in the following terms:

"Under those circumstances, the conviction imposed by the Trial Court on A-1, A-2 and A-5 or the offence under Section 302 read with 149 IPC, is perfectly correct. But a slight modification could be made as regards A-1 and A-2. In the case, A-3 has been convicted only for Section 302 IPC simplicitor. A-1 has been convicted for the offence under Section 302 read with 149 IPC. But both A-1 and A-3 have attacked the deceased and caused injury. Though the injury caused by A-1 is not fatal, it would be appropriate to convict A-1 and A-2 for the offence under Section 302 read with 34 IPC. Therefore, the conviction imposed on A-1 and A-2 is modified to the extent that they are convicted for the offence under Section 302 read with 34 IPC, instead of Section 302 read with 149 IPC and A-2's conviction for the offence

under Section 307 IPC is confirmed."

The High Court confirmed the judgment of conviction and sentence imposed by the Trial Court in respect of other offences on accused Nos.3, 4 and 5 under Sections 302, 326, 324 and 302 read with Section 149 IPC respectively.

Accused Nos. 1, 2 and 3 preferred the special leave petition before this Court, but the same was dismissed.

Mr. A.T.M. Rangaramanujam, learned Senior Counsel and Mr. P. Ramesh, learned counsel appearing on behalf of the Appellants in these appeals, raised only two contentions before us - (i) having regard to the role played by them, they cannot be said to have committed an offence under Section 302 IPC read with Section 149 IPC; and (ii) no case has been made out even for convicting them for offences under Sections 326 IPC and 307 IPC respectively.

Before we advert to the merit of the matters, we may briefly notice the following facts:

P.W.1-Raja and P.W.2-Kannan are the sons of deceased Babu Naidu. P.W.3-Venkatesan is his brother. Tmt. Balamani, who examined herself as P.W.4, is the wife of the deceased. P.W.5-Leela and P.W.6-Gandhimathi are the daughters of the deceased. P.W.7-Srinivasan and P.W.8-Panneer Selvam were the friends of the deceased. P.W.10-Tmt. Pushpa is the wife of afore-mentioned P.W.3-Venkatesan. The accused Nos.1 and 2 were brothers, whereas accused Nos. 3 and 5 are their associates. The mother of the accused Nos. 1 and 2, Jayalakshmi, was distantly related to the deceased. The family of both the parties were carrying on business of chit transactions. P.W.4-Balamani joined chit transactions carried out by the said Jayalakshmi, but allegedly did not pay the amount payable therefor regularly. Further, allegedly, two other subscribers introduced by P.W.4-Balamani had also not paid back the chit amount to Jayalakshmi, as a result whereof there used to be frequent quarrels between the parties.

It is further alleged that a proposal made for marriage of accused No.1-Selvam with a girl failed. The relatives of the said girl came to the village for inquiring about the suitability of the accused No.1. On suspicion that certain informations were allegedly furnished by Babu Naidu, the deceased, pursuant where to the girl's family declined to give her in marriage with Selvam, they bore grudge against the family of the deceased. On 16.3.1994, P.W.1 was in his shop. He was joined by P.W.2-Kannan. Both of them were proceeding to their houses at about 12.15 in the mid-night. When they reached near their houses, the accused persons accosted them with deadly weapons. Selvam allegedly shouted at P.W.2-Kannan saying that in view of their conduct, the image of his family had been spoiled and so his entire family should be done away with; whereupon accused No.2-Sasi stabbed P.W.2 on his abdomen as a result whereof he cried out. His intestines came out. Upon seeing the said ghastly sight, P.W.1-Raja cried aloud, ran into his house and informed his parents about the said occurrence, whereupon they rushed to the scene of occurrence. Accused No.3-Madhu, allegedly, stabbed the deceased on his shoulder and right thigh. When he turned round and tried to go into the house by climbing the stairs, accused No.1 prevented him from doing so and hit him with a knife on his head. On hearing the cries, P.W.3-Venkatesan, a neighbour, came out of his house along with his wife, P.W.10. They saw the incident. When they came to the scene of occurrence, the accused No.4-Kalith attacked him with a knife on his hand, as a result whereof P.W.3 suffered an injury on the back side of his right hand, as also in the fingers. Seeing the said

assault, P.W.10 shouted, whereupon accused No.5-Munivel cut the ring fingers of both her left and right hands. P.W.7-Srinivasan and P.W.8-Selvam and other persons by that time arrived at the scene. The accused persons then fled away. The deceased and other 'injured persons' thereafter were taken to Virugambakkam Police Station. A First Information Report (FIR) was lodged. Thereafter, they were referred to Royapettah Hospital. A case was registered for offences under Sections 147, 148, 448, 326 and 307 of the Indian Penal Code.

On the basis of the said FIR, P.W.19-Venkateswaran, the Inspector of Police, took up investigation and visited the scene of occurrence. He, thereafter, received the message as regard death of the said Babu Naidu, whereafter Section 302 IPC was also added in the FIR. Keeping in view the nature of injuries suffered by P.W.2, a dying declaration was also recorded by a Magistrate. During the course of investigation, the accused persons were arrested and it is stated that on confession having been made by the accused Nos.3 and 4, two knives marked as M.Os. 4 and 7, as well as a shirt M.O.27 were recovered from their possession. Similarly, on alleged confession made by the accused Nos. 2 and 4, other weapons and knives marked as M.Os. 3, 5 and 6 were recovered. All such recoveries were made on 18.3.1994.

The part played by each of the Appellants herein and the extent thereof were categorically stated by all the eye-witnesses 'injured persons' viz., P.Ws. 2, 3, 4, 5, 6, 7, 8 and 10.

As the statements of all the material witnesses are identical and corroborative of each other, we would notice hereinbelow the statements of P.W.1 only, which reads:

"\005..On 16.3.94, at 12 O'clock in the night, I was remaining in my shop. At that time, my brother Kannan who was working under a Doctor came to me as usual to take me home along with him. Both of us were on our way home. The five accused came running with knife. Then Selvam intercepted us and said, "You have not given the chit amount to my mother; you have prevented the girl who was to be married to me; I will completely destroy all of you with your family". A-2 Sasi with the knife he was holding in his hand stabbed Kannan at the left side of his abdomen. Because of this, my elder brother's intestine has come out. I screamed out and immediately ran to our up-stair. I told my mother that, my brother was stabbed by them. At once, my father, came down from the upstairs, without a shirt on him. At that time, Madhu, mechanic, hacked him at his right shoulder and right thigh. (He showed the length of that knife by his hand and said, he had hacked with such a knife). A-1 Selvam with a curved knife hacked my father at the backside of his head. My father swooned and fell down in a pool of blood. I, my mother, my sisters screamed out; 'Oh'. At that time, my uncle Venkatesan and his wife Pushpa came running from their house, nearby. The accused Kali hacked Venkatesan at his right hand, back and fingers. My aunt Pushpa screamed out "Aioh". At that time, Munivel cut forcibly two of the fingers of my aunt Pushpa. Seenivasan, Selwaraj, Panneerselvam, Babu and Mohan chased the accused who were running away. The accused got into an auto at Arunachalam road and fled."

It is not disputed that P.W.3 and P.W.10 are independent witnesses. It is also not disputed that they suffered some injury on their hands.

As regard the nature of injuries suffered by P.W.10 and her husband, P.W.3 was not cross-examined.

The injuries on the person of P.W.3 were medically examined by P.W.11-Dr. S. Loganathan. The said witness stated:

"\005.On 17.3.94 at 1 0'clock in the night, Venkatesan, around 45 years, was brought by P.C.8120. He stated that, he was also attacked at the same time as has been seen in the Accident Register related to Kannan. On examining him, he was found in his normal senses and he could also talk. His ring finger on his right hand was seen cut. There was an incised injury seen on his back and it measure 2 x 1 x 2"CM. I sent him to the Doctor for emergency treatment. The aforesaid injury could have been came at the time and manner said by him. Ex.P.5 is the copy of the related Accident Register. In that early morning at 1.05 hrs, one Pushpa aged 30 was brought by the aforesaid Police constable and she was in her senses and she stated that she was attacked as has been seen in the aforesaid Accident Register and she could talk. The ring finders of both of her hands were damaged. At that time, there was simple injury with abrasion noticed on the ring fingers. I sent her to the duty doctor for treatment. The occurrence could have happened at the time and manner stated by her. Ex.P.5 is the copy of the Accident Register given by me."

P.W.10, Pushpa, in her evidence stated:

"\005.The witness Venkatesan is my husband. In the 3rd month of 1994, on one day, in the night, at 12 0'clock, I was keeping awake in my house. At that time my husband was asleep. On hearing noise, we went out. The 5 accused were having knives with them. A4 attacked my husband with a knife at his right hand and back. On seeing it, I screamed. At once A5 cut my fingers forcibly with a knife. Now, I am unable to move my right hand ring finger and my left hand ring finger. After a while, Raja took us by an auto to the Police Station. From there, we went to the Royapettai hospital."

The contention of the learned counsel appearing on behalf of the Appellants is that the doctor had not disclosed the dimension of the said injuries. In relation to the injury suffered by P.W.10-Pushpa, it was also not stated whether the injury was a deep incised wound or not. Our attention has moreover been drawn to the fact that according to the doctor, P.W.10 suffered an abrasion. Criticism was also made to the effect that although the injured were sent to the duty doctor, he had not been examined.

We may, at this juncture, notice the following findings arrived at by the learned Sessions Judge:

"\005As Kalith had cut off the right hand ring finger of P.W.3 Venkatesan and hacked him on his

back and wounded him; I find him guilty of offence u/s 326 IPC.

The accused Munivel has attacked P.W.10 Pushpa with knife and inflicted abrasions and cut away her ring fingers on both her hands. In the related copy of the Accident Register Ex.P.6, the concerned Dr. Loganathan has failed to mention this fact and this shows, along with certain other truths, that, he has failed to discharge his duty. Hence, though there are no clear evidence to show that, Pushpa has been inflicted injuries in such a manner to lose her ring fingers in both her hands and seen in a shivering state; I find the accused Munivel to be guilty of offence u/s 324 I.P.C."

It was submitted that in view of the afore-mentioned finding, it must be held that no injury was caused to P.W.10-Pushpa by the Appellant-Munivel and in any view of the matter, her statements before the court being contrary to the medical evidence, the same should not have been accepted by the trial court as well as the High Court.

It was further submitted that having regard to the fact that the Appellants herein had not participated in the assault on the deceased or his family members, and further having regard to the fact that they are not related to the accused Nos. 1 and 2, with whom the deceased and his family members were stated to be on inimical terms, they cannot be held guilty of the offence punishable under Section 302/149 IPC. The learned counsel would contend that in view of the statements made by the prosecution witnesses, it is highly doubtful that the Appellants herein had participated in the occurrence and more so because the weapons seized from them had not been sent for chemical examination. It was further pointed out that although a finger of P.W.3 was said to have been severed, the same was not recovered by the Investigating Officer, P.W.19.

Mr. Subramonium Prasad, learned counsel appearing on behalf of the State, on the other hand, supported the findings of the courts below.

The incident in question is not denied or disputed. Death of Babu Naidu is also not disputed. The fact that P.Ws. have received injuries on their persons, is also not disputed and otherwise stand proved. A finding of fact has been arrived at by the trial Judge, as also by the High Court that the offences, with which the Appellants herein together with other three accused persons were charged with, have been fully proved. We have noticed hereinbefore that the special leave petition filed by the main accused, namely, accused Nos.1, 2 and 3 has been dismissed.

The primary question which would, therefore, arise for our consideration is as to whether the Appellants herein can be said to have formed a common object with accused Nos.1, 2 and 3 to commit the alleged offences or not.

All the accused persons came together. All of them were armed with knives. They accosted P.Ws. 1 and 2. They caused the death of the deceased round about mid-night on the street. The first incident took place near the house of the deceased. The stab injury was given to P.W.2-Kannan as a result whereof his intestines came out. When P.W.1, on seeing this, went inside the house and narrated the same to his parents and others, the deceased and his wife P.W.4 came out followed by their daughters P.W.5 and P.W.6. The deceased was not only given a fatal blow by the accused No.2, when he intended to save

himself from further attack and was running towards the stairs, he was prevented by accused No.1 from doing so. He was assaulted by him. P.W.3 and P.W.10 came to the scene of occurrence on hearing their cries. P.W.3, admittedly, is a constable. It is, therefore, but natural that he sought to intervene. A grievous injury was caused to him by the Appellant-Kalith.

It is also natural that seeing her husband being assaulted by a knife, P.W.10 would make an attempt to intervene. She was also assaulted with a knife resulting in her suffering injuries on both of her hands. We may now deal with the criticism that the medical evidence and the ocular evidence in this case is wholly unwarranted. P.W.11-Dr. S. Loganathan in his deposition referred to the Accident Register. So far as an injury received by P.W.3 is concerned, he categorically stated that not only his ring finger on right hand had been seen cut, he also suffered an incised injury on his back, whereupon he was sent to the duty doctor for emergency treatment. As regards the injury suffered by P.W.10, the doctor referred to the Accident Register. He found that the ring fingers of both her hands were injured. He might have mistakenly stated that the same appeared to him, at that time, to be a simple injury with abrasion, but the fact remains that she was also sent to the duty doctor/emergency for treatment, which indicates that the contents of the injury report was correct.

It may be that the duty doctor had not been examined, but the same is not very material for the purpose of the present case.

Two facts in this regard are of some significance: firstly, as regard the nature of injuries suffered by P.W.10, she had not been cross-examined; secondly, P.W.11 referred to the Accident Registers wherein, as regard the injuries suffered by P.W.3 and P.W.10, it was recorded:

"P.W.3 (Venkatesan):

Nature of injury : Alleged assault as per
and treatment AR No.029471
(State simple,
grievous or opinion
reserved)

O/E : Patient conscious (N.C) Right middle
Finger cut off.
Cut injury over back of chest about
2" x 1".

Treatment given Referred to DAOS."

P.W.10 (Pushpa):

Nature of injury : Alleged assault by known
and treatment- person at about 12.15 a.m. (N.C)
(State simple, residing at the above address
grievous by (N.C) knife.
opinion reserved)

O/E : Patient conscious (N.C)
cut injury Left ring finger
and right ring finger.

Treatment given Refer to DAOS."

It was, therefore, clearly established that the said witnesses suffered injuries.

Doctor, P.W.11, examined them at about 1 a.m. on 17.3.1994, that is, immediately after the incident took place. We do not find any material contradiction between the ocular evidence and medical evidence. The genuineness or otherwise of the said Accident Registers is not in question. Correctness of the entries made therein is not in issue. Even no suggestion has been given to the doctor that the entries made in the said Accident Registers were not correct.

Only because the Investigating Officer was negligent and did not make any attempt to recover the cut fingers of P.W.3, the same by itself would not be sufficient to discard the consistent evidences of all the eye-witnesses.

For the purpose of invoking Section 149 of the Indian Penal Code, the entire incident must be taken into consideration. The occurrence resulted in death of one person and suffering of grievous injuries by some of the prosecution witnesses were part of the same transaction.

The Appellants, as stated, came with the other accused persons with deadly weapons at mid-night. The active role played by both the Appellants herein, clearly stand proved by the evidence of the prosecution witnesses.

We have noticed hereinbefore that not only at the dead of night P.W.1 and other witnesses were attacked, accused Nos.1 and 2 also went inside the house of the deceased and prevented the deceased from escaping from further assault.

Whoever had come to the scene of occurrence and tried to intervene, had suffered injuries at the hands of one or the other accused persons. P.W.3 and P.W.10, it is true, were related to the deceased, but, they were also related to accused Nos. 1 and 2, as admittedly, both the families are related to each other. It is not the case of the Appellants or for that matter the accused Nos. 1 and 2 that P.W.3 and P.W.10 were inimical to them. There is nothing on record to show that they bore any grudge towards them. It is in the aforementioned fact situation, the role played by the Appellants herein must be considered.

They did not make any attempt to stop the Appellants Nos.1 and 2 from continuing assault on the family members of P.W.2. They had not only watched as to how P.W.2-Kannan, son of the deceased, the deceased himself, P.W.-4 wife of deceased and the two daughters, i.e., P.W.5-Leela and P.W.6-Gandhimathi, suffered injuries after injuries at the hands of the accused Nos.1 and 3, but even when P.W.3-Venkatesan came to intervene, a grievous injury was caused by Appellant-Kalith and when thereafter P.W.10, a lady intervened, she also had sustained injuries on her hands. It is immaterial, in the aforementioned fact situation obtaining herein that P.W.10 suffered simple injury, in view of the fact that whoever had come to interfere had been dealt with one way or the other by the accused persons.

We, therefore, have no hesitation in rejecting the contentions of the learned counsel for the Appellants that the medical evidence is contrary to the ocular evidence and Section 149 is not attracted. In *Triloki Nath & Ors. vs. State of U.P.* [(2005) 9 SCALE 76], this Court opined:

"\005For the purpose of attracting Section 149 of the IPC, it is not necessary that there should be a pre-concert by way of a meeting of the persons of the unlawful assembly as to the common object. If a common object is adopted by all the persons and

shared by them, it would serve the purpose."

Yet again in *Bishna @ Bhiswadeb Mahato & Ors. vs. State of West Bengal* [(2005) 9 SCALE 204], the afore-mentioned principle has been reiterated.

Section 149 of the Indian Penal Code provides for vicarious liability. If an offence is committed by any member of an unlawful assembly in prosecution of a common object thereof or such as the members of that assembly knew that the offence to be likely to be committed in prosecution of that object, every person who at the time of committing that offence was member would be guilty of the offence committed. The common object may be commission of one offence while there may be likelihood of commission of yet another offence, the knowledge whereof is capable of being safely attributable to the members of the unlawful assembly. Whether a member of such unlawful assembly was aware as regard likelihood of commission of another offence or not would depend upon the facts and circumstances of each case. Background of the incident, the motive, the nature of the assembly, the nature of the arms carried by the members of the assembly, their common object and the behaviour of the members soon before, at or after the actual commission of the crime would be relevant factors for drawing an inference in that behalf. [See *Rajendra Shantaram Todankar vs. State of Maharashtra & Ors.* reported in (2003) 2 SCC 257.]

It is also well-settled that if death had been caused in prosecution of the common object of an unlawful assembly, it would not be necessary to record a definite or specific finding as to which particular accused out of the members of the unlawful assembly caused the fatal injury. [See *State of Rajasthan vs. Nathu & Ors.* reported in (2003) 5 SCC 537.]

For the foregoing reasons, in our view, there is no merit in these appeals. The appeals are dismissed accordingly.